Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 23 JANUARY 25, 1989 No. 3/4

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 10

(T.D. 89–5)

CUSTOMS REGULATIONS AMENDMENT CONCERNING RECIPROCAL PRIVILEGES EXTENDED TO AIRCRAFT OF ZAMBIA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Zambia to the list of countries whose commercial aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawal from Customs or internal revenue custody for use by aircraft in certain circumstances. The Department of Commerce has found that Zambia will exempt U.S. registered aircraft from duties and taxes on aircraft supplies and support equipment in a manner substantially reciprocal to those exemption privileges the United States may provide, under law, to operators of foreign registered aircraft. Accordingly, the United States will now exempt commercial aircraft of Zambian registry from the payment of duties and taxes when their supplies and ground support equipment are withdrawn from Customs or internal revenue custody.

DATES: The exemption became effective on March 30, 1988. This regulation is effective January 11, 1989.

FOR FURTHER INFORMATION CONTACT: William Lawlor, Entry Rulings Branch (202) 566–5856.

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 314, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin for use as supplies (including equipment), ground equipment, or for

maintenance or repair of the aircraft from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes. This privilege is granted if the Secretary of Commerce finds and advises the Secretary of the Treasury that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to U.S. registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce found and conveyed to the Customs Service, effective March 30, 1988, that Zambia will grant the American operators of U.S. registered aircraft, exemption from customs duties and related taxes on aircraft supplies and equipment needed to support commercial aviation flights into and out of Zambia, in a manner that is substantially reciprocal to exemption privileges which the United States may provide, under 19 USC §§ 309 and 317, and under 26 USC § 4221, to operators of foreign registered aircraft. This document amends § 10.59(f), Customs Regulations (19 CFR 10.59(f)), by changing the list of countries whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft to indicate that Zambia has been granted an exemption regarding aircraft supplies and ground support equipment.

Authority to sign an amendment to this section has been delegated to the Chief, Regulations and Disclosure Law Branch.

Executive Order 1291

This document does not meet the criteria for a "major rule" as defined in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), certification is not required because no notice of this action is necessary.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the granting of an exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that notice and public procedure thereon are unnecessary. As Zambia is currently extending exemption privileges regarding supplies and ground support equipment to United States aircraft, a delayed effective date is not appropriate.

DRAFTING INFORMATION

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 10

Customs duties and inspection, Imports, Exports, Oil imports, Petroleum.

AMENDMENT TO THE REGULATIONS

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and specific relevant authority continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624. § 10.59 also issued under 19 U.S.C. 1309, 1317.

2. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), is amended by inserting "Zambia" in the proper alphabetical position in the column headed "Country", and the number of this Treasury Decision opposite in the column headed "Treasury Decision(s)".

Dated: January 4, 1989.

KATHRYN C. PETERSON,
Chief,
Regulations and Disclosure Law Branch.

[Published in the Federal Register, January 11, 1989 (54 FR 972)]

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19 CFR Part 10

(T.D. 89–6)

CUSTOMS REGULATIONS AMENDMENT CONCERNING RECIPROCAL PRIVILEGES EXTENDED TO AIRCRAFT OF THAILAND

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by expanding the exemptions to which commercial aircraft registered in Thailand are eligible, to include an exemption from payment of

Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft in certain circumstances. The Department of Commerce has informed Customs that Thailand will now exempt flights by U.S. registered carriers from duties and taxes on ground support equipment in a manner substantially reciprocal to those exemption privileges the United States may provide, under law, to operators of foreign registered aircraft. Accordingly, the United States will now exempt commercial aircraft of Thai registry from the payment of duties and taxes when ground support equipment is withdrawn from Customs or internal revenue custody. Previously, the exemption has applied only to aircraft supplies and did not extend to ground support equipment.

DATES: The exemption became effective on November 16, 1988. This regulation is effective January 11, 1989.

FOR FURTHER INFORMATION CONTACT: William Lawlor, Entry Rulings Branch, U.S. Customs Service (202) 566–5856.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin for use as supplies (including equipment), ground equipment, maintenance or repair of the aircraft from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes. This privilege is granted if the Secretary of Commerce finds and advises the Secretary of the Treasury, that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to United States registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

In T.D. 71–138, the United States extended a partial exemption from duties and taxes to Thai aircraft. In that decision, the exemption from duties and taxes was not extended to ground equipment.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce found and conveyed to the Customs Service, that Thailand will now grant to American operators of U.S. registered aircraft, exemption from customs duties and related taxes on ground support equipment, except security equipment needed to support commercial flights into and out of Thailand, in a manner that is substantially reciprocal to exemption privileges which the United States may provide, under 19 U.S.C. §§ 1309 and 1317, and under 26 U.S.C. § 4221, for such equipment and use by foreign registered aircraft operating into and out of the United States. This finding became effective on November 16, 1988. This document amends § 10.59(f), Customs Regulations (19 CFR 10.59(f)), by removing the exception which had ap-

peared in the regulations which indicated that Thai aircraft were not exempt from duties and taxes which applied to ground support equipment.

Authority to sign an amendment to this section has been delegated to the Chief, Regulations and Disclosure Law Branch.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), certification is not required because no notice of this action is necessary.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure for established policy or procedures but merely announces the granting of an exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that notice and public procedure thereon are unnecessary. As Thailand is extending exemption privileges regarding ground support equipment to United States aircraft, a delayed effective date is not appropriate.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports, Oil imports, Petroleum.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and specific relevant authority continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624. § 10.59 also issued under 19 U.S.C. 1309, 1317.

2. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), is amended by deleting, in the column headed "Exceptions, if any, as noted", opposite "Thailand", the wording "Not applicable to ground equipment", and inserting the number of this Treasury Decision opposite "Thailand" in the column headed "Treasury Decision(s)".

Dated: January 5, 1989.

KATHRYN C. PETERSON,
Chief,
Regulations and Disclosure Law Branch.

[Published in the Federal Register, January 11, 1989 (54 FR 970)]

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19 CFR Part 10

(T.D. 89–7)

CUSTOMS REGULATIONS AMENDMENT CONCERNING RECIPROCAL PRIVILEGES EXTENDED TO AIRCRAFT OF TURKEY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Turkey to the list of countries whose commercial aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft in certain circumstances. The Department of Commerce has found that Turkey will exempt U.S. registered aircraft from duties and taxes on aircraft supplies and support equipment in a manner substantially reciprocal to those exemption privileges the United States may provide, under law, to operators of foreign registered aircraft. Accordingly, the United States will now exempt commercial aircraft of Turkish registry from the payment of duties and taxes when their supplies and ground support equipment are withdrawn from Customs or internal revenue custody.

DATES: The exemption became effective on December 5, 1988. This regulation is effective January 11, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Entry Rulings Branch, U.S. Customs Service (202) 566–5856.

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin for use as supplies (including equipment), ground equipment, or for maintenance or repair of the aircraft from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes. This privilege is granted if the Secretary of Commerce finds and advises the Secretary of the Treasury that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to U.S. registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce found and conveyed to the Customs Service, effective December 5, 1988, that Turkey will grant the American operators of U.S. registered aircraft, exemption from customs duties and related taxes on aircraft supplies and equipment needed to support commercial aviation flights into and out of Turkey, in a manner that is substantially reciprocal to exemption privileges which the United States may provide, under 19 USC §§ 309 and 317, and under 26 USC § 4221, to operators of foreign registered aircraft. This document amends § 10.59(f), Customs Regulations (19 CFR 10.59(f)), by changing the list of countries whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft to indicate that Turkey has been granted an exemption regarding aircraft supplies and ground support equipment.

Authority to sign an amendment to this section has been delegated to the Chief, Regulations and Disclosure Law Branch.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), certification is not required because no notice of this action is necessary.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the granting of an exemption for which there is a statutory

basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that notice and public procedure thereon are unnecessary. As Turkey is currently extending exemption privileges regarding supplies and ground support equipment to United States aircraft, a delayed effective date is not appropriate.

DRAFTING INFORMATION

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 10

Customs duties and inspection, Imports, Exports, Oil imports, Petroleum.

AMENDMENT TO THE REGULATIONS

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and specific relevant authority continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624. § 10.59 also issued under 19 U.S.C. 1309, 1317.

2. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), is amended by inserting "Turkey" in the proper alphabetical position in the column headed "Country", and the number of this Treasury Decision opposite in the column headed "Treasury Decision(s)".

Dated: January 5, 1989.

KATHRYN C. PETERSON,
Chief,
Regulations and Disclosure Law Branch.

[Published in the Federal Register, January 11, 1989 (54 FR 971)]

(T.D. 89–8)

AUTOMATED MANIFEST SYSTEM (AMS) INFORMATION DISSEMINATION PRODUCT; PUBLIC ACCESS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document revises the final notice document published at T.D. 88–38 in the Federal Register on July 1, 1988 (53 FR 25041) concerning the information dissemination product called the Automated Manifest System, to reflect the preparation for sale to the public of a daily magnetic tape containing all releasable data from vessel manifests which are transmitted electronically to Customs through the AMS. The existing notice "contemplated" the preparation of a weekly tape.

EFFECTIVE: December 16, 1988.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Russell A. Berger, Regulations and Disclosure Law Branch, (202) 566–8237. Operational Aspects: Eula D. Walden, Office of Automated Commercial System Operations, (202) 566–6012.

SUPPLEMENTARY INFORMATION

BACKGROUND

By a final notice document published as T.D. 88–38 in the Federal Register on July 1, 1988 (53 FR 25041), pursuant to OMB Circular A–130, dated December 12, 1985 (50 FR 527391), the public was informed of a new information dissemination product developed by Customs called the Automated Manifest System (AMS) which allows carriers, port authorities (PAs), and service centers to electronically transmit data to Customs from inward vessel manifests, thereby facilitating and expediting the release of cargo from Customs custody.

The public was also informed that Customs would make available for public sale a magnetic tape containing data from all the manifests being transmitted electronically to Customs through AMS, assuring proper confidentiality where requested. It was at the time "contemplated that the tape [would] be available on a weekly basis."

In this latter regard, it is now contemplated, and determined, that the magnetic tape will instead be made available on a daily basis. Persons interested in receiving this tape or in obtaining further information about it may contact the Office of Automated Commercial System Operations at (202) 566–6012.

DRAFTING INFORMATION

The principal author of this document was Russell A. Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Dated: January 4, 1989.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, January 13, 1989 (54 FR 1469)]

(T.D. 89–9)

APPROVAL AND ACCREDITATION OF PKB-SCANIA (USA), INC., AS A COMMERCIAL GAUGER AND LABORATORY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval and accreditation of PKB-Scania (USA), Inc., as a commercial gauger and laboratory.

SUMMARY: PKB-Scania (USA), Inc., of New Orleans recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils in bulk and in liquid form, and for accreditation to analyze petroleum and petroleum products for API gravity and sediment and water content. Customs has determined that PKB meets the requirements for approval and accreditation.

Therefore, in accordance with § 151.13(c), PKB-Scania (USA), Inc., 524 Elmwood Park Blvd., New Orleans, Louisiana 70123, is approved to gauge and accredited to analyze the products named above in all Customs districts.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–2446).

Dated: January 9, 1989.

JOHN B. O'LOUGHLIN,
Director,
Office of Laboratories and Scientific Services.

[Published in the Federal Register, January 17, 1989 (54 FR 1841)]

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19 CFR Part 101

(T.D. 89–10)

CUSTOMS REGULATIONS AMENDMENT RELATING TO THE ESTABLISHMENT OF DAVENPORT, IOWA, ROCK ISLAND AND MOLINE, ILLINOIS, AS A PERMANENT PORT OF ENTRY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document provides public notice that the port of Davenport, Iowa, and Rock Island and Moline, Illinois, which was

established as a temporary port of entry on a trial basis approximately 2 years ago, has been accorded permanent status as a port of entry.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service (202) 556–9425.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In a notice published on October 17, 1985 (50 FR 42035), the Customs Service set forth for public comment a proposal to establish a port of entry for a 2-year trial basis at Davenport, Iowa, Rock Island and Moline, Illinois. In a subsequent notice of final rulemaking published in the Federal Register on April 16, 1986 (51 FR 12843), designated as T.D. 87–76 and effective May 16, 1986, the proposal was adopted. The reason for adoption and a discussion of the comments received are set forth in T.D. 86–76, as well as a discussion of the authorities under which changes in Customs field organization are made.

Reference was also made in that decision to the Customs criteria for establishing ports of entry in T.D. 82–37 published in the Federal Register on March 9, 1982 (47 FR 10137). Among these criteria are a minimum workload of 2,500 consumption entries per year. Based on current statistics it is projected that this entry-volume standard will be met in fiscal year 1988 and exceeded in the future. Accordingly, the temporary status for the port is terminated and permanent port-of-entry status is substituted.

The limits of the port of entry of Davenport-Rock Island-Moline are as follows:

In Rock Island County, Illinois, the Townships of Andalusia, Blackhawk, Rock Island, South Rock Island, Moline, South Moline, Coal Valley, Hampton, Zuma, and Coe; in Henry County, Illinois, the Townships of Colona, Hanna, and Edford; and in Scott County, Iowa, the Townships of Buffalo, Blue Grass, Hickory Grove, Sheridan, Lincoln, LeClaire, Pleasant Valley, Bettendorf, and that area of the City of Davenport enclosed within the present limits of these townships.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document. Customs routinely makes adjustments to its field organization throughout the United States to accommodate the volume of Customs-related activity in various parts of the county. Although the changes may have a limited effect upon small entities in the areas affected, they are not expected to be sig-

nificant because adjusting the field organization in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of § 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendment will not have a significant economic impact on a substantial number of small entities.

Executive Order 1291

Because the amendment relates to the Customs field organization, and will not result in a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

Inapplicability of Public Notice and Delayed Effective Date Requirements

The criteria and considerations for establishing a new port of entry on a permanent basis are essentially the same as those for establishing a port on a temporary basis. These criteria and considerations were fully discussed, and comments from interested members of the public taken into consideration, at the time of notice of final rulemaking with respect to establishment of the port on a temporary basis. Accordingly, it is determined that solicitation of further comments and delay in the change in status of the port would serve no useful purpose. Therefore, it is determined that good cause exists for dispensing with the procedures for notice and the opportunity for public comment pursuant to 5 U.S.C. 553(b)(3)(B). For the same reasons, good cause exists for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Drafting Information

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Authority

These changes are made under the authority vested in the President by § 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch II), and pursuant to the authority provided by Treasury Department Order No. 101–05 dated February 17, 1987 (52 FR 6282).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

AMENDMENTS TO THE REGULATIONS

Part 101, Customs Regulations (19 CFR Part 101), is amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR Part 101), continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 1, 66, 1202 (Gen. Headnote 11), 1624, Reorganization Plan of 1965; 3 CFR 1965 Supp.

2. This list of Customs regions, districts and ports of entry in § 103.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by revising the reference at the end of the listing for Davenport, Iowa, and Rock Island and Moline, Illinois, in the port-of-entry column under the North Central Region to read "including the territory described in T.D. 89–10.".

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: December 8, 1988.
JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, January 17, 1989 (54 FR 1684)]

(T.D. 89–11)

SYNOPSES OF DRAWBACK DECISIONS

The following are synopses of drawback rates issued June 12, 1986 to December 9, 1987, inclusive, pursuant to Subpart C, Part 191, Customs Regulations; and an approval under Treasury Decision 84–49.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded or issued by, and the date on which it was issued.

Dated: January 11, 1989.

File: DRA-1-09
221072

JOHN DURANT,
Director,
Commercial Rulings Division.

(A) Company: BASF Structural Materials, Inc., Narmco Materials Div.
Articles: Prepreg plastic composite products (unitape and woven fabric)
Merchandise: Synthetic carbon yarn made of polyacrylic nitrile fibers
Factory: Anaheim, CA
Statement signed: July 20, 1987
Basis of Claim: Appearing in
Rate issued by RC of Customs in accordance with § 191.25(b)(2): New York, October 23, 1987
Revokes: T.D. 85-75-H to cover successorship from Narmco Materials, Inc.

(B) Company: Beatrice/Hunt-Wesson, Inc.
Articles: Refined cottonseed oil
Merchandise: Summer yellow cottonseed oil
Factories: Fullerton, CA; Bayonne, NJ; Chicago, IL; Memphis, TN; Savannah, GA
Statement signed: June 9, 1986
Basis of claim: Used in
Rate issued by RC of Customs in accordance with § 191.25(b)(2): San Francisco, July 29, 1986
Revokes: T.D. 84-169-K to cover successorship from Hunt-Wesson Foods, Inc.

(C) Company: The Bibb Co.
Articles: Yarns treated for adhesion
Merchandise: Polyester fiber; rayon fiber
Factory: Porterdale, GA
Statement signed: July 16, 1986
Basis of claim: Used in
Rate issued to RC of Customs: Miami, October 2, 1987

(D) Company: Borden Industrial Food Products, Inc.
Articles: Frozen concentrated lemon juice and reconstituted lemon juice
Merchandise: Concentrated lemon juice for manufacturing
Factory: Indio, CA; Waterloo, NY; Chicago, IL; Birmingham, AL
Statement signed: February 2, 1987

Basis of claim: Appearing in
Rate issued by RC of Customs in accordance with § 191.25(b)(2): Los Angeles, December 23, 1987
Revokes: T.D. 86–125–E to cover additional factory

(E) Company: E. I. du Pont de Nemours and Co., Inc.
Articles: "SILVERSTONE" and "TEFLON" finishes of various grades
Merchandise: Polytetrafluoroethylene (PTFE) resin
Factories: Toledo, OH; Parlin, NJ
Statement signed: September 29, 1987
Basis of claim: Appearing in
Rate issued by RC of Customs in accordance with § 191.25(b)(2): Boston (Baltimore Liquidation): October 22, 1987
Revokes: T.D. 87–99–J to cover additional factory

(F) Company: E. I. du Pont de Nemours and Co., Inc.
Articles: "HYTREL" polymers of various types
Merchandise: Polyester thermoplastic elastomers—"HYTREL" 5556 and "HYTREL" 4056
Factory: Deepwater, NJ
Statement signed: February 18, 1987
Basis of Claim: Appearing in
Rate forwarded to RC of Customs: Boston, October 14, 1987

(G) Company: Fieldcrest Cannon, Inc.
Articles: Towels
Merchandise: Cotton yarn
Factories: Kannapolis, NC; York, SC
Statement signed: July 27, 1987
Basis of claim: Appearing in
Rate issued by RC of Customs in accordance with § 191.25(b)(2): New York, September 11, 1987
Revokes: T.D. 83–258–D to cover successorship from Cannon Mills Co.

(H) Company: General Electric Co.
Articles: Polyphenylene oxide; ortho cresol (methylphenol); mesitol (2,4,6–trimethyphenol); 2, 6–xylenol; alkylated phenolic blends; and polymer pellets (trade name: Noryl)
Merchandise: Methanol; phenol; high impact polystyrene (HIPS)
Factory: Selkirk, NY
Statement signed: February 26, 1987
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation
Rate forwarded to RC of Customs: New York, October 15, 1987
Revokes: T.D. 83–124–H

(I) Company: Interface Flooring Systems, Inc.
Articles: Tufted nylon carpet; fusion bonded nylon carpet
Merchandise: Nylon filament yarn
Factory: LaGrange, GA
Statement signed: August 18, 1987
Basis of claim: Used in
Rate forwarded to RC of Customs: Miami, December 9, 1987

(J) Company: Interface Flooring Systems, Inc.
Articles: Tufted and fusion bonded carpet tiles; uncut roll goods
Merchandise: Fiberglass carpet backing
Factory: LaGrange, GA
Statement signed: August 18, 1987
Basis of claim: Used in
Rate forwarded to RC of Customs: Miami, December 9, 1987

(K) Company: International Flavors & Fragrances, Inc.
Articles: Fragrances, components and intermediates; flavorings, components and intermediates
Merchandise: Various fragrances and chemicals
Factory: Hazlet, Union Beach, and South Brunswick, NJ
Statement signed: July 21, 1987
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, November 18, 1987

(L) Company: Irridelco Drip
Articles: Plastic tubing
Merchandise: Linear low density polyethylene resin
Factory: Fresco, CA
Statement signed: August 6, 1987
Basis of claim: Used in
Rate issued by RC of Customs in accordance with § 191.25(b)(2): San Francisco, September 23, 1987
Revokes: T.D. 87–100–L to cover successorship from Irridelco International Corp.

(M) Company: LTV Steel Co., Inc.
Articles: Galvanized steel
Merchandise: Unwrought zinc
Factories: Aliquippa and Pittsburgh, PA; Youngstown (3), Canton, Cleveland (2), and Warren, OH; Buffalo, NY; Chicago and Hennepin, IL; Gadsden, AL; Hammond and East Chicago, IN; Willimantic, CT; Wichita, KS; Atco, NJ; Wilton, IA; and Gulfport, MS
Statement signed: April 11, 1986
Basis of claim: Appearing in
Rate issued by RC of Customs in accordance with § 191.25(b)(2): Boston (Baltimore Liquidation), June 12, 1986

Revokes: T.D. 85–190–J to cover name change from Jones & Laughlin Steel Inc.

(N) Company: Litton Systems, Inc., Winchester Electronics Div.
Articles: Connectors
Merchandise: Stamping coil stock, molding compounds, stamped contacts, various miscellaneous items
Factories: Watertown, Oakville, and New Milford, CT
Statement signed: October 9, 1987
Basis of claim: Used in, less valuable waste (coil stock and molded plastic parts); Appearing in (remaining merchandise)
Rate forwarded to RC of Customs: New York, November 19, 1987

(O) Company: The Lutravil Co.
Articles: Polyester web wadding, polyester carpet backing
Merchandise: Polyethylene terphthalate adipate (a polyester resin a/k/a co-polyester resin)
Factory: Durham, NC
Statement signed: May 15, 1987
Basis of claim: Used in
Rate forwarded to RC of Customs: Miami, November 9, 1987

(P) Company: Navistar International Transportation Corp.
Articles: Agricultural equipment and parts thereof
Merchandise: Copper tubing; aluminum sheet
Factories: East Moline, Rock Island, and Melrose Park IL; Indianapolis, IN; Springfield, OH (2)
Statement signed: September 22, 1987
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, December 1, 1987
Revokes: T.D. 87–103–S

(Q) Company: Papetti's Hygrade Egg Products, Inc.
Articles: Frozen egg whites; frozen egg yolk (yellow); frozen whole eggs
Merchandise: Shell (whole) chicken eggs
Factory: Elizabeth, NJ (2)
Statement signed: December 1, 1986
Basis of claim: Used in
Rate issued by RC of Customs in accordance with § 191.25(b)(2): San Francisco, January 12, 1987
Revokes: T.D. 81–281–R to cover additional factory

(R) Company: Polaroid Corp.
Articles: Camera batteries for film packs
Merchandise: Manganese dioxide
Factory: Waltham, MA
Statement signed: September 23, 1987

Basis of claim: Used in
Rate forwarded to RC of Customs: New York, December 1, 1987

(S) Company: Rogers Corp.
Articles: Phenolic molding compounds; DAP (Dially Phthalate) molding compounds; phenolic sheet molding board
Merchandise: Dynasylan-ameo-tech and dynasylan-vtmoeo
Factory: Manchester, CT
Statement signed: February 3, 1987
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, October 15, 1987

(T) Company: Transbas, Inc.
Articles: Herbicides
Merchandise: 2,4-dichlorophenoxyacetic acid; methylchlorophenoxyacetic acid
Factory: Billings, MT
Statement signed: October 1, 1987
Basis of claim: Used in
Rate forwarded to RC of Customs: Los Angeles (San Francisco Liquidation), December 1, 1987
Revokes: T.D. 83–254–W

(U) Company: The Uniroyal Goodrich Tire Co.
Articles: Nylon tire fabrics; nylon belting fabrics; nylon hose yarns; nylon expansion joint fabrics
Merchandise: Nylon filament yarns 6 and 6/6
Factories: Winnsboro, SC; Scottsville, VA; Shelbyville, TN; Hogansville, GA
Statement signed: July 7, 1987
Basis of claim: Used in, less valuable waste
Rate issued by RC of Customs in accordance with § 191.25(b)(2): New York, July 23, 1987
Revokes: T.D. 82–86–Y to cover successorship from Uniroyal, Inc.

(V) Company: VME Americas Inc.
Articles: Wheel-type front-end loaders; loader attachments; articulated-steel dump trucks
Merchandise: Steel plate
Factory: Skyland, NC
Statement signed: July 20, 1987
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, November 18, 1987

(W) Company: Vanchem, Inc.
Articles: Ethyl centralite
Merchandise: N-ethyl aniline (mono ethyl aniline)
Factory: Lockport, NY

Statement signed: March 12, 1987
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, October 14, 1987

(X) Company: Vulcan Materials Co.
Articles: Methylene chloride; chloroform; carbon tetrachloride
Merchandise: Methanol
Factories: Withita, KS; Geismar, LA
Statement signed: September 23, 1987
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation
Rate forwarded to RC of Customs: New Orleans, October 15, 1987
Revokes: T.D. 83–16–Z

(Y) Company: Xidex Corp.
Articles: Magnetic recording tape and discs
Merchandise: Polyester film, iron oxide, and nitrocellulose/cyclohexanone mixture
Factories: Santa Clara and Sunnyvale, CA
Statement signed: March 25, 1987
Basis of claim: Appearing in
Rate forwarded to RC of Customs: Los Angeles (San Francisco Liquidation), November 18, 1987

(Z) Company: Zoecon Corp.
Articles: Fly bait
Merchandise: Refined sugar EFG* bulk (*extra fine granulated)
Factory: Dallas, TX
Statement signed: July 14, 1987
Basis of claim: Used in
Rate forwarded RC of Customs: Houston, October 15, 1987

Approval Under T.D. 84–49

(1) Company: Corpus Christi Petrochemical Co.
Articles: Ethylene; propylene
Merchandise: Petroleum derivatives (naphtha, natural gasoline, gas oil)
Factory: Corpus Christi, TX
Statement signed: September 23, 1987
Basis of claim: As provided in T.D. 84–49
Rate forwarded to RC of Customs: Houston, October 16, 1987

a. The B. F. Goodrich Company operating under T.D.s 79–155–I, 79–192–M, 80–175–F, 81–281–L and 83–16–I, has changed its name to The Uniroyal Goodrich Tire Company

b. Searle Foods Resources, Inc., operating under T.D. 87–103–W has changed its name to The Nutrasweet Company

c. World Dryer Corporation operating under T.D. 80–245–Z has changed its name to World Dryer Corporation, Inc., A subsidiary of Beatrice Foods, Inc., and further changed its name to World Dryer, a division of Specialty Equipment Co., Inc.

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 9, 1989.

The following are abstracts of unpublished rulings recently issued by the U.S. Customs Service. The abstracts are set forth to provide interested parties with general information regarding the types of issues currently being addressed by the U.S. Customs Service. By their inclusion herein, the rulings abstracted shall not be considered "published in the Customs Bulletin," within the meaning of section 177.10 of the Customs Regulations (19 CFR 177.10), nor do such abstracts establish a uniform practice.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

(C.S.D. 89–9)

Abstracts of Unpublished Customs Service Decisions

COMMODITY CLASSIFICATION

C.S.D. 89–9(1)—*Commodity:* Abrasive grinding elements. Triangular grinding pieces used in grinding machinery exported to Japan for cleaning, grinding and the attachment of a new abrasive. *Classification:* The foreign cleaning, grinding and attachment of a new abrasive constitute repairs as that term is used in subheading 9802.00.40, HTSUS, and, therefore, entitled to the partial duty exemption provided for in that tariff provision, upon compliance with 19 CFR 10.8. *Document:* Hqs. ruling letter 555084, dated November 29, 1988.

C.S.D. 89–9(2)—*Commodity:* Belt loops made in Mexico from component materials of U.S. origin. The assembly operation consists of sewing together a belt loop strip with lining material and then sewing the strip end-to-end. *Classification:* Prior ruling reaffirmed granting allowances under subheading 9802.00.80, HT-

SUS, for the exported belt loop components of U.S. origin. *Document:* Hqs. ruling letter 555028, dated October 31, 1988.

C.S.D. 89–9(3)—*Commodity:* Car mats made of vinyl imported in four-piece sets. *Classification:* The car mat sets are classifiable as parts and accessories for automobiles under subheading 8708.99.5090, HTSUSA. *Document:* Hqs. ruling letter 080651, dated October 31, 1988.

C.S.D. 89–9(4)—*Commodity:* Casting figurines made of pewter. The figurines are exported to Mexico for intermediate processing. Processing entails metal cutting and grinding operations to remove surface imperfections; chemically-inducing an oxidizing/blacking process; and removal of the oxidized/blacked layer by means of abrasive tumbling and buffing. The final processing steps performed in the U.S. entail further surface perfecting, "satin buffing;" a faceting operation described as "diamond cutting;" and the application of a clear acrylic lacquer to all figurines. *Classification:* Those pewter figurines that are subjected to the faceting operation will be entitled, upon return to the U.S. and compliance with the certification of registration requirements, to the partial duty exemption provided by TSUS item 806.30, (subheading 9802.00.60, HTSUS). *Document:* Hqs. ruling letter 555105, dated October 31, 1988.

C.S.D. 89–9(5)—*Commodity:* Comforter. Convertible baby comforter that can be folded into a doll that looks like a bear, made of nonwoven 100 percent polyester fill, and a fabric shell of 65 percent polyester and 35 percent cotton. *Classification:* The comforter is classifiable in the provision for articles of bedding * * *, other, quilts, eiderdowns and comforters, of man-made fibers, subheading 9404.90.9020, HTSUSA, textile category 666. *Document:* Hqs. ruling letter 082601, dated October 17, 1988.

C.S.D. 89–9(6)—*Commodity:* Fabric. Brushed fabric processed in Canada by running the fabric through a wire brush to impart a slightly different appearance to the fabric. *Classification:* The fabric will be entitled to classification under TSUS item 806.20 (subheading 9802.00.40, HTSUS). *Document:* Hqs. ruling letter 555124, dated November 1, 1988.

C.S.D. 89–9(7)—*Commodity:* Footwear. A woman's slip-on pump with two-inch spike heel and plastic upper decorated by mesh stars with coated yarn. *Classification:* The pump is classified in subheading 6402.99.15, HTSUS. *Document:* Hqs. ruling letter 080650, dated October 6, 1988.

C.S.D. 89–9(8)—*Commodity:* Footwear with loosely held appurtenances. A woman's Y-thong plastic sandal with a plaid padded textile insole, a unit molded plastic outer sole and a plaid textile bow sewn to the upper. *Classification:* The sandal is classified under subheading 6402.99.15, HTSUS, which provides for other

footwear with outer soles and uppers of rubber or plastics, other footwear, other, having uppers of which over 90 percent of the external surface area is rubber or plastic. *Document:* Hqs. ruling letter 082661, dated October 17, 1988.

C.S.D. 89–9(9)—*Commodity:* Handbags and a satchel. A woman's handbag style 40551 is made of PVC, with leather piping, leather shoulder straps and multi-compartments. Handbag style 41981 is made of PVC with leather strips and shoulder straps, and has a central compartment with an inner zipper compartment. The satchel, style 47811 is made of cotton fabric with leather handles and leather piping. Handbag, style 47841 has multi-compartments, a leather shoulder strap, and cotton fabric body with leather piping. *Classification:* The satchel, style 47811 and multi-compartment handbag style 47841 are classifiable under subheading 4202.22.4500, HTSUSA, as handbags whether or not with shoulder strap, including those without handle, with outer surface of textile materials, other, of vegetable fibers and not of pile or tufted construction, of cotton. The multi-compartment handbag, style 40551, and handbag, style 41981 are classifiable under subheading 4202.22.1500, HTSUSA, as handbags, whether or not with shoulder strap, including those without handle, with outer surface of plastic sheeting. *Document:* Hqs. ruling letter 081375, dated October 3, 1988.

C.S.D. 89–9(10)—*Commodity:* Ice scraper. Heated ice scraper that enables people to clear ice from the windshields of motor vehicles more quickly and efficiently than built-in defrosting mechanisms. *Classification:* Windshield ice scrapers designed with a heating element that is powered from a 12 volt power source and adapted for use with automobile cigarette lighters are classified under the provision for motor vehicle accessories under subheading 8708.99.5090, HTSUSA. *Document:* Hqs. ruling letter 082080, dated October 17, 1988.

The Following are Abstracts of Unpublished Decisions of the New York Seaport Area:

C.S.D. 89–9(11)—*Commodity:* Basket designed for the Halloween holiday, made of wood with an open top design. *Classification:* The basket is classifiable in subheading 9505.90.6000, HTSUSA, which provides for festive, carnival and other entertainment articles, other * * * *Document:* New York ruling letter 832830, dated November 1, 1988.

C.S.D. 89–9(12)—*Commodity:* Dress, girls' 100 percent cotton dress. The upper portion is knit, the lower part is woven. The dress is sleeveless, has capping at the neckline and armholes, ruffles and a hemmed bottom. *Classification:* The dress is classifiable in subheading 6204.42.3060, HTSUSA, which provides for women's or

girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), dresses, of cotton, other * * * girls'. Textile category 336. *Document:* New York ruling letter 832659, dated November 1, 1988.

C.S.D. 89–9(13)—*Commodity:* Flags. Textile linesman flags used in the game of soccer. The flags are made of nylon textile material which is sewn onto wooden sticks which also have wooden handles. *Classification:* The linesman flags are classifiable in subheading 6307.90.9000, HTSUSA, which provides for other made up articles, including dress patterns, other, other. *Document:* New York ruling letter 832762, dated November 1, 1988.

C.S.D. 89–9(14)—*Commodity:* Forearm protector. The forearm protector has a high density foam covered by hard plastic, both within a textile shell. *Classification:* The article is classifiable in subheading 9506.19.8080, HTSUSA, which provides for articles and equipment for gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter * * * snow-skis and other snow ski equipment * * * other. *Document:* New York ruling letter 833154, dated November 1, 1988.

C.S.D. 89–9(15)—*Commodity:* Head rests composed of two pieces of textile sewn onto the top and bottom of a plastic frame, designed for use as a head rest at the beach or for relaxing at home. *Classification:* The head rest is classifiable in subheading 6307.90.9000, HTSUSA, which provides for other made up articles, including dress patterns, other, other. *Document:* New York ruling letter 832273, dated November 1, 1988.

C.S.D. 89–9(16)—*Commodity:* Plastic garments and garments made of laminated materials. Style 4117 is a raincoat; style 8146 is a knee-length parka; Styles 8117 and 8147 are two-piece rainsuits; Style 2694 is a poncho; Style 8314 is a parka; and Style 9330 is an insulated parka. *Classification:* Separately classifiable articles. Style Nos. 4117, 8146, 2694, and 8314 are classifiable in subheading 6210.20.1010, HTSUSA, for garments made up of fabrics of heading 5903, garments of the type described in subheadings 6201.11 to 6201.19, of man-made fibers; having an outer surface impregnated, coated, covered, or laminated with rubber or plastics material which completely obscures the underlying fabric. Style Nos. 8117 and 8147 are classifiable in subheading 6210.40.1010, HTSUSA, for garments, made up of fabrics of heading 5903, other, man's or boys' garments of man-made fibers; having an outer surface impregnated, coated, covered, or laminated with rubber or plastics material which completely obscures the underlying fabric. Style No. 9330 is classifiable in subheading 3926.20.5050, HTSUSA, for articles of plastics and articles of oth-

er materials of headings 3901 to 3914: articles of apparel. *Document:* New York ruling letter 832420, dated November 1, 1988.

C.S.D. 89–9(17)—*Commodity:* Tool set. A child's twenty piece tool set encased in a wooden box. The set includes a hammer, screwdriver, pliers, saw, simulated ruler, sandpaper, nail puller, pencil, two plastic triangles, protractor, gimlet, and a mitre box. *Classification:* The tool set is classifiable in subheading 9503.70.8000, HTSUSA, which provides for other toys, put up in sets or outfits: other: other. *Document:* New York ruling letter 831979, dated November 1, 1988.

C.S.D. 89–9(18)—*Commodity:* Tool set. A child's forty-four piece tool set encased in a wooden box. The tools have a limited function and are designed to be used by children. *Classification:* The tool set is classifiable in subheading 9503.70.8000, HTSUSA, which provides for other toys, put up in sets or outfits: other: other. *Document:* New York ruling letter 831981, dated November 1, 1988.

C.S.D. 89–9(19)—*Commodity:* Toys. Various toys, item 2035, finger puppets made of plastic and take the shape of a grotesque monster. Item 2066, sticky finger articles, small plastic hand that when thrown at any surface will adhere and slowly inch its way down that surface. Item 9075, magic pads can be inscribed with a plastic stylus and the inscription removed by lifting the opaque sheet from the waxed cardboard bottom. Item 2055, "Ugly Balls," rubber molded to have grotesque or highly exaggerated facial features. *Classification:* The toys are classifiable in subheading 9503.90.6000, HTSUSA, which provides for other toys (except models), not having a spring mechanism. *Document:* New York ruling letter 832557, dated November 1, 1988.

C.S.D. 89–9(20)—*Commodity:* T-shirt. The garment is an all white T-shirt made of 100 percent cotton finely knit fabric with no ornamenting features. *Classification:* The T-shirt is classifiable in subheading 6109.10.0005, HTSUSA, which provides for T-shirts, singlets, tank tops and similar garments, knitted or crocheted: of cotton: men's or boys': T-shirts, all white short sleeves, without pockets, trim or embroidery. Textile category 352. *Document:* New York ruling letter 831652, dated November 1, 1988.

U.S. Customs Service

General Notice

NOTICE THAT ENTRY/ENTRY SUMMARY REQUIRED FOR IMPORTATION OF HONG KONG TEXTILES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Effective February 1, 1989, Customs will require the filing of the entry/entry summary ("live" entry) for all textiles and textile articles of Hong Kong origin which have a textile category number.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dick Crichton, Office of Trade Operations, (202) 566–9443.

SUPPLEMENTARY INFORMATION:

U.S. Customs does not monitor a quota for textiles and textile articles from Hong Kong. However, quota levels have been established and are administered by the Department of Commerce. Current quota limits were published in the Federal Register (53 FR 46911) on November 21, 1988.

Section 142.13(c)(2), Customs Regulations (19 CFR 142.13(c)(2)), provides that entry summary documentation, with estimated duties attached, or a withdrawal for consumption with estimated duties attached, shall be filed at the time of entry before release of any merchandise of a class designated by Customs. Based on this authority, Customs is requiring, as of February 1, 1989, that an entry/entry summary (a "live" entry) be filed for all imported textiles and textile articles of Hong Kong origin which have a textile category number. The Departments of Commerce and Treasury have concurred that "live" entries be required for the importation of those textiles and textile articles. This procedure is necessary to assure timely and accurate reporting of textile shipments of Hong Kong origin.

Dated: December 30, 1988.

MICHAEL H. LANE,
Acting Commissioner of Customs.

[Published in the Federal Register, January 5, 1989 (54 FR 349)]

U.S. Court of Appeals for the Federal Circuit

(Appeal No. 88–1491)

ALGOMA STEEL CORP., LTD., PLAINTIFFS-APPELLANTS, CHRISTIANSON PIPE, LTD., IPSCO, INC. AND IPSCO STEEL, INC., PLAINTIFFS *v.* UNITED STATES AND U.S. INTERNATIONAL TRADE COMMISSION, DEFENDANTS-APPELLEES, LONE STAR STEEL CO, MAVERICK TUBE CORP.. SAWHILL TUBE DIVISION AND CYCLOPS CORP., DEFENDANTS

William Silverman, Dow, Lohnes & Albertson, of Washington, D.C., argued for plaintiffs-appellants. With him on the brief was *Michael P. House. Rufus E. Jarman,* Barnes, Richardson & Colburn, of New York, New York, represented the plaintiffs.

George Thompson, Office of the General Counsel, U.S. International Trade Commission, of Washington, D.C., argued for defendant-appellee. With him on the brief were *Lyn M. Schlitt,* General Counsel and *James A. Toupin,* Assistant General Counsel. *Michael H. Stein,* Dewey, Ballantine, Bushby, Palmer & Wood, of Washington, D.C., argued for defendants.

Appealed from U.S. Court of International Trade.

RESTANI, *Judge:*

(Decided January 4, 1989)

Before MAYER, *Circuit Judge,* NICHOLS, *Senior Circuit Judge,* and MICHEL, *Circuit Judge.*

NICHOLS, *Senior Circuit Judge.*

This is a proceeding under 28 U.S.C. § 1295(a)(5) to review a decision of the United States Court of International Trade, 688 F. Supp. 639, 22 Cust. B. & Dec. 13 (1988), which affirms a determination of the International Trade Commission (ITC) which holds that the sales at less than fair value (LTFV or "dumping") of certain steel products, oil country tubular goods (OCTG) from Canada, injure or threaten injury to an industry in the United States. In the case of appellant Algoma Steel Corporation, a Canadian producer, the Department of Commerce had previously determined that, over a six-month period studied, such sales occurred, but it is undisputed that they were slightly under 50 percent of all United States sales Algoma made. Algoma had a printout made of the data establishing this, but the ITC refused to receive or consider it, holding that for

purposes of its injury determination, sales at more than fair value (MTFV) were not to be excluded. The Court of International Trade rejected Algoma's assertion that this was legal error, as do we. That is the sole issue in the appeal, and our view of it requires that we affirm.

I

In the intricate administrative machinery Congress has erected over the years for dumping and countervailing duty cases, one unique feature is the allocation of responsibility to two agencies otherwise independent of one another, the Commerce Department and the ITC, the requisite injury determination for the latter, and everything else for the former. Naturally the specifics as to who does what is for dispute and discussion. Commerce, determining that sales at LTFV have occurred, normally makes no finding as to what percentage of all sales they are, but rather and in lieu thereof, states a "dumping margin" which is a weighted average adjusting appropriately for the MTFV sales. The ITC says it is not told how many or which the MTFV sales were and the raw data that was before the Commerce Department is of no use to it because its injury determination covers a different time frame. This kind of issue should be one for the agencies to resolve between themselves, and not for the courts. We think we should confine our consideration to the ultimate product: is an injury determination, not confined to the LTFV sales alone, arbitrary, capricious, or otherwise contrary to the law? We hold it is not.

As Clausewitz, the sapient Prussian general, once wrote, "the object of war is peace." Likewise, the object of sales at LTFV is other sales at MTFV. Many such sales might be the best evidence possible that the LTFV sales had served their purpose and the United States competitor was in full retreat. It is, therefore, not at all obvious that the MTFV sales are *per se* legally irrelevant. They might be irrelevant as a practical matter in some instances, but that would have to be shown, and no such showing has even been attempted here. The whole issue is presented as one of *per se* legality or illegality.

The statute seems to us to speak in plain language and to be unambiguous. Section 731, 19 U.S.C. § 1673 says:

> If—
>
> (1) the administering authority determines that a *class* or *kind* [emphasis supplied] of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and
>
> (2) the Commission determines that—
>
> (A) an industry in the United States—
>
> (i) is materially injured, or
>
> (ii) is threatened with material injury, or

> (B) the establishment of an industry in the United States is materially retarded,
>
> by reason of imports of that merchandise, or by reason of sales (or the likelihood of sales) of that merchandise for importation,
>
> then there shall be imposed upon such merchandise an antidumping duty, * * *.

If a "class or kind" of that merchandise is sometimes sold at LTFV, the terms of any individual sale do not matter. Here Commerce told the ITC that a class or kind of goods, namely OCTG, was being so sold. It seems quite apparent that any one sale by the foreign producer, Algoma, or any other foreign producer, is one less for the domestic industry, and to that extent whether it is over or under fair value is immaterial but, of course legal injury, unlike economic, is a concept requiring some admixture of wrong doing. Some LTFV sales must be found, but if they occurred, the ITC is not required to pursue details as to the chain of causation of every instance where the foreign supplier supplanted the domestic one.

Appellant cites some legislative history and we have considered the citations, but the instances given probably do not stem from as careful consideration as does the statutory language itself, nor is it obvious the writers adverted to, and intended to discuss, instances of sales at LTFV and MTFV by the same foreign supplier in the same period of six months. On the other hand, appellee refers to its own administrative practice, unbroken since the enactment of the present law, as consistent with its position in this case. This would require more detailed consideration if the statutory language were not so plain but, at any rate, there is nothing there to undermine our position.

We have also considered the General Agreement on Tariffs and Trade (GATT). Congress no doubt meant to conform the statutory language to the GATT, but we are not persuaded it embodies any clear position contrary to ours. Should there be a conflict, the United States legislation must prevail. 19 U.S.C. § 2504(a).

Thus, it is not arbitrary, capricious, or contrary to law for the ITC to refuse to consider a computer printout showing the breakdown of Algoma's sales during a six-month period between LTFV and MTFV sales. The period, incidentally, is one as to which entries will normally have been liquidated, so any assessment of dumping duties that ensues will not have any significant impact on the parties' businesses in that period.

This is not to say that a similar printo;ut might not justify consideration if the raw data were supported by reasons specific to the particular case, why sales at MTFV were not relevant to the injury determination. It is only the appellant's *per se* rule that we reject. We are also of course not saying that the sales of the class or kind at MTFV and at LTVF are *per se* of equal probative value, so any

distinction between them would be unwarranted however supported by the facts.

II

Appellant seeks to discredit the opinion of the trial court by citation and discussion of a decision by Judge Newman of that court, *Sprague Electric Co.* v. *United States,* 488 F. Supp. 910, 84 Cust. Ct. 243 (1980), twice revisited by that Judge, 84 Cust. Ct. 260 (1980), and 529 F. Supp. 676, 2 CIT 302 (1981). This was a challenge by an American producer to a negative injury determination, the converse to the case we have here. One issue was the correctness of the ITC in that case having confined its consideration to sales at LTFV, excluding all others. Naturally, the American producer wanted all of them considered. Judge Newman, rejecting this point, seems to say the ITC would be guilty of legal error if it *refused* to exclude the LTFV sales. His *result* would perhaps be consistent with ours, as we are inclined to think there is no *per se* rule either way, but reluctantly we acknowledge his language does conflict with our view. We could stop with the obvious, that an appellate court is not bound by what a trial court says the law is, even in the same case, still less another one. The parties and the trial court, in this case, lay so much stress on their discussion of *Sprague Electric,* however, perhaps we should say more than the obvious.

In the first place, then, it is asserted the second and third *Sprague Electric* decisions overturned *sub silentio* the conclusion we have found stated in the first, since Judge Newman ended up affirming later determinations of the ITC that he could not but have known (it is said) were based on all the sales of the class or kind involved, not just the LTFV sales. When, however, it is as here a matter of *stare decisis,* not *res judicata* or collateral estoppel, any legal conclusion not expressed in words is of small precedential authority, if any.

In the second place, the Trade Agreements Act of 1979, which reenacted as 19 U.S.C. § 1673 the 1921 provision originally codified as 19 U.S.C. § 160, did so before the first Newman decision and therefore cannot possibly be presented as reenacting a provision which has received a judicial construction. The dates are wrong. The administrative constructions seem to have been conflicting.

In the third place, we do not think the decisions of the Customs Court are relegated to being, as precedents, decisions of a predecessor court to the Court of International Trade, in the same way decisions of the old Court of Claims and Court of Customs and Patent Appeals are to us. They are decisions of the same court. Judge Restani, in the decision under review, rightly calls the Customs Court "This court." It is nowhere spelled out in the Custom Courts Act of 1980, Pub. L. No. 96–417, but is implicit in section 703(a) that the status of individuals serving as Customs Court judges is not af-

fected, and section 704 that actions pending under the old law shall continue to be processed.

However, among trial courts it is unusual for one judge to be bound by the decisions of another and, if it is to occur, such a rule should be stated somewhere. That is not done here; with all the criticism directed by appellants towards Judge Restani for not following Judge Newman, nowhere is anything pointed out saying she must. She, herself, accepts an analysis of Judge Newman's decisions as precedents which we deem in part mistaken, but she is right in making her own decision nevertheless.

CONCLUSION

The decision of the Court of International Trade which is appealed from is affirmed.

AFFIRMED

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U.S. Customs Service

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General Notice

U.S. Court of Appeals for the Federal Circuit

☆U.S. G.P.O. 1989- 241-040:80022